COMMITTEE ON WATER AND SANITATION
(Standing Committee of Berkeley County Council)

Chairman: Mr. Steve C. Davis, District No. 8

A **meeting** of the **COMMITTEE ON WATER AND SANITATION**, Standing Committee of Berkeley County Council, met on **Monday, January 12, 2004**, in the Assembly Room of the Berkeley County Office Building, 223 North Live Oak Drive, Moncks Corner, South Carolina, at 7:16 p.m.

PRESENT: Mr. Steve C. Davis, Council Member District No. 8, Chairman; Mr. Milton Farley, Council Member District No. 1; Mrs. Judith K. Spooner, Council Member District No. 2; Mr. William E. Crosby, Council Member District No. 3; Mr. Charles E. Davis, Council Member District No. 4; Mr. Dennis L. Fish, Council Member District No. 5; Mrs. Judy C. Mims, Council Member District No. 6; Mr. Caldwell Pinckney, Jr., Council Member District No. 7; Mr. D. Mark Stokes, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Mr. James H. Rozier, Jr., Supervisor, ex officio, was excused from the meeting.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Chairman Steve Davis called the meeting to order and asked for approval of minutes from the Committee on Water and Sanitation Meeting held December 8, 2003.

APPROVAL OF MINUTES

It was moved by Council Member Spooner and seconded by Council Member Crosby to approve the minutes as presented. This motion was passed by unanimous voice vote of the Committee.

During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.

A. Consideration of an **Ordinance** amending **Ordinance No. 00-3-17**, Which granted a Non-Exclusive Sewer Franchise to **William M Ledbetter.**

It was moved by Council Member Spooner and seconded by Council Member Mims to approve, prior to First Reading, an Ordinance amending Ordinance No. 00-3-17. The motion was passed by unanimous voice vote of the Committee.

With no objection from the Committee, the sequence of the evening's agenda items was modified.

C. David Jennings, Esquire, Berkeley County Water and Sanitation Authority Legal Counsel, Re: **2.** Amending Resolution 03-33

Mr. David Jennings asked for the Committee's approval of a Resolution amending Resolution 03-33. Mr. Jennings stated that an error had been made in drafting Resolution 03-33, wherein, the number "$250" from the old sewer capacity reservation fee was used. The number should have been "$350". The proposed resolution amending Resolution 03-33 would clarify the credit available as being the difference between the rate of $350 on June 30th, and the rate of $750, which went into effect on July 1st. This is a $400 difference, rather than a $500 difference.

It was moved by Council Member Mims and seconded by Council Member Crosby to approve, for Council's adoption, a Resolution amending Resolution 03-33. The motion was passed by unanimous voice vote of the Committee.

E. Mr. Phillip Ford, Charleston Trident Home Builders Association, Re: Impact Fees and Concerns regarding fees and contracts of BCW&SA.

Mr. Phillip Ford stated he was Executive Director of the Charleston Trident Home Builders Association, representing builders in Berkeley, Dorchester and Charleston Counties. The developers' concerns were:

1. County Council did not adopt a clause to grandfather projects with regard to water and sewer impact fees.

2. County Council's adoption of a new fee schedule requiring all fees to be paid up front by the developer.

3. County Council's adoption of new water and sewer inspection fees of $100 each.

4. Customer service issues with regard to the December 15th deadline for grandfathered projects.

5. Changes to the old contract adopted, without developers being involved in the process, i.e.:
    - new contract requires a two-year warranty on piping;
    - unwritten rule that County would help defer cost on pump stations over $150,000 if it were to be used for the whole subdivision.

The concerns expressed by Mr. Ford were accepted as information only. No action was required.

Mr. Jennings responded to Mr. Ford's concerns.

Council Member Crosby questioned how things were handled when builders went into old subdivisions and built houses on empty lots.

Mr. Jennings responded that in a subdivision such as Beverly Hills, fees would have been paid by the original developer. When a house is built on a vacant lot, the current impact fee, or the impact fee in existence at the time the house is built, is paid.

With no objection from the Committee, Mr. David Jennings proceeded to address **Item B** and **Item C-1** on the evening's Agenda to clarify answers to questions posed by Council Members.

B. J. Marc Hehn, Director, Berkeley County Water and Sanitation Authority, Re: Capacity at Waste Water Treatment Plants

C. David Jennings, Esquire, Berkeley County Water and Sanitation Authority Legal Counsel, Re: **1.** 250-Lot Rule

Mr. Jennings stated that one of the issues was the fact that the County was running out of capacity at both the Central Berkeley Plant and the Lower Berkeley Plant. At the Lower Berkeley Plant, the total deposit in the DHEC checkbook was 15,000,000 gallons per day. Withdrawals in excess of 13,000,000 gallons per day were being experienced at Berkeley, but dry weather flow (the actual wastewater that comes in on a regular day), was in the 5,000,000-gallon per day range. The County has 8,000,000 gallons per day taken out of the checkbook that is not flowing through the Treatment Plant. Restrictions placed on developers, such as the 250-Lot Rule, would assure no one warehoused a large number of unconnected lots, preventing the next developer from getting anything. Large tracts are being developed in Berkeley County at the present time. The concern was that the County not deplete its checkbook faster than people moved into the houses and discharged wastewater into the system.

With no objection from the Committee, Chairman Steve Davis called Mr. Lee Barnes to the podium to address his concerns regarding **Item C-1,** the 250-Lot Rule.

Mr. Lee Barnes stated he represented Stokes, Bush, Barnes Land Company, Charleston Brown Company, LLC, as well as three other development companies in Charleston. These companies were set up to provide housing or an opportunity for builders to put in homes that required water and sewer. He and his sister, Lydia Johnson, had been developing land together for about four years as a large developer in Berkeley County. Approximately 1,200 lots were in the process of development. Some were already sold, but more were contracted to sell. Four different development companies were set up to own different tracts of land to strike different contracts with builders. Mr. Barnes requested that the Committee recognize that there were four different development companies, and they be treated as such. At least three of the LLC's were established before the 250-Lot Rule took effect, and the fourth one was contemplated back in 2001. The fourth LLC was not needed until the land closing, which occurred earlier this year. Mr. Barnes felt the Authority wanted to treat the four separate entities as one developer. He did not desire to circumvent the rule by grabbing capacity at a cheap rate.

Ms. Lydia Johnson stated she was a real estate agent in Charleston. She reiterated that the four LLC's were set up one entity at a time, separate and apart from each other.

Chairman Steve Davis asked when the very first LLC entity was formed?

Mr. Barnes responded that Charleston Brown, LLC, was formed in May, 2001. Tanner East was the second to be formed. Closing on the first piece of land in Tanner East took place in February 2002 or late 2001. Tanner Plantation Phase V Development, LLC, was thought to have been established after the County's resolution took effect, but the lots had already been under contract in January.

Chairman Steve Davis questioned if the creation of four different entities was possibly for income tax purposes?

Mr. Barnes responded yes, because four different K-1's were issued to investors. There were four different investment groups.

Mr. Barnes continued by stating that they had to sign a contract with the Sewer Authority, and this was commonly referred to as a developer agreement. This agreement was between Berkeley County acting by and through the Berkeley County Water & Sanitation Authority and Charleston Brown, LLC. The agreement states, "Whereas, the Authority is an agency of Berkeley County, South Carolina, and is responsible for the acquisition and distribution of supplies of fresh water and providing sewerage collection treatment and disposal services within Berkeley, and whereas, the applicant is in the business of developing real estate, would like to develop the property known as Tanner Plantation Phase VI, section." Mr. Barnes interpreted this passage as saying the applicant was in the business of developing real estate, and that is what Mr. Barnes did. It said the applicant was Charleston Brown. It had been Charleston Brown since late 2001 when the first contract to develop was secured.

Council Member Fish questioned whether Mr. Barnes' issue was he was unable to get capacity or it was going to cost more money?

Mr. Barnes responded that his issue was that it would cost more money. A contract had been negotiated in November with a budget that had been in place all along. There was no charge added for the additional capacity even after the resolution had been authorized and enacted because of Mr. Barnes' interpretation of being grandfathered in.

Chairman Steve Davis asked, "Your problem is that they are limiting you to that one particular development instead of the other three entities that you have?"

Mr. Barnes replied, "That is correct. They are limiting us in terms of: 1) not giving us the discount; and 2) there is the question as to whether we are going to even be able to develop this many lots at once. It is just contrary to the 21st Century, to use Mr. Jennings' terminology. He and I talked about this when we met at his office, and he was

in total agreement, he and Mr. Hehn, that something needs to be done, and I think this is something you all are addressing now – whether a developer should be limited to 250 lots at any one time, when we are trying to work through 400 lots in a year based on commitments that we already got from builders. First of all, it is in our financial interest, it is in any developer's financial interest, to get a lower fee if he can get a lower fee. I understand your dilemma however, and that is a dilemma of not having enough capacity for all of us to go out and grab everything we can get our hands on. I am happy just to have the rights to go out and construct just what I need right now. I would pull anything else off the table. Something that we are going to start 12 months from now, I am happy to pay the higher fee for that in 12 months if we can just have the rights to develop what we need to develop now to meet our current obligations."

Council Member Fish questioned Mr. Barnes as to the number of lots shown on the plat he had.

Mr. Barnes responded that they had 1,087 lots.

Council Member Fish stated that fees for water and sewer had just been increased. He expressed concern that user fees would be raised once again after capacity reached a maximum because of developers. He indicated this to be unfair to all the other taxpayers.

Council Member Fish continued by asking who the other developers were?

Mr. Barnes, referring to a plat, responded that Charleston Brown was being developed by Beazer Homes. Palmetto Traditional was being developed for themselves, and it was not included in the 1,087 lots. Another section was being developed for Palmetto Traditional, as they were providing lots there this summer. Another section was for Ryland Homes. Lastly, negotiations were taking place with a builder and some local builders for another section.

Council Member Spooner asked if there was construction, right now, on some of those sections of property?

Mr. Barnes responded that there were over 200 homes on the ground.

Council Member Spooner expressed concern that with the number of new homes being built, more schools and school taxes would be required. Taxes on homes did not pay the full bill without industry. It was necessary for commercial and industrial growth to be balanced with residential to help absorb the taxes necessary to support the capacity/services necessary.

Mr. Barnes responded that if the issue was to secure sewer capacity, it was in everyone's best interest to let them secure it, so homeowners could be tapped in and start paying those fees. They were not interested in warehousing sewer capacity. Hopefully,

the increased economic activity that all new residents brought would increase the tax base to help out with those other concerns.

Council Member Spooner agreed with Mr. Barnes, but stated that it did not pay the bill totally.

Chairman Steve Davis questioned the number of true lot owners.

Mr. Barnes responded that there were about 200 of those lots owned by individuals now. Mr. Barnes' company had a majority interest in those lots.

Chairman Steve Davis asked, "When you say your company, then that spans and incorporates these four LLC's out there you are talking about?"

Mr. Barnes responded, "That is correct. Companies set up subsidiaries all the time and are treated as individual companies. We are just asking to be treated as individual companies. In addition to that, I think it is the Sewer Authority's own document that speaks to what a developer is. A developer in every legal document that I have with the Sewer Authority is my LLC entities, the four different entities."

Council Member Charles Davis asked, "Is that your problem that instead of having 1,000 lots split between four companies, you only have 250?"

Mr. Barnes responded, "I am sorry. I really did not state the issue. The issue is the Sewer Authority is looking upon all that we are doing as being a single developer."

Council Member Charles Davis asked, "Actually, by law, the LLC's are a recognized tax base company, individually?"

Mr. Barnes responded, "Yes, sir."

Mr. Jennings approached the podium and stated, "Mr. Barnes gave you an accurate reflection of the conversations he and I had back in December. This, from your staff's standpoint, presents two issues. The issue that we were discussing with Mr. Barnes in December was whether four LLC's, controlled by the same company, was for purposes of your grand fathering resolution, four developers, Mr. Davis, as you said, worthy of getting 1,000 grand fathered capacity reservation fees, or whether your language, which said 250 lots per developer, made a single owner of four different LLC's a single developer. My opinion to Marc was in terms of your intent to grandfather. Your intent was to grandfather 250 lots per developer, not per separate LLC, no matter who controlled it, because if it did not matter, then the restriction made no difference. So, that was issue number one. Our opinion was that no group – and Mr. Barnes is right – I looked at the four operating agreements for the LLC. The owner, the Class A member, the managing director, the person with 100 percent control in each of those four LLC's was Stokes, Bush & Barnes, LLC. I interpreted your language, what we wrote for you

all, to be a single developer in terms of grand fathering the fees. Again, from your intent, you each knew all along, every dollar you do not get from impact fees or capacity reservation fees – you all passed the budget - we have bonds to pay – you have coverage you have to meet. Every dollar you do not get from one pot, you have got to get from another pot. The other pot is the rate payers."

Mr. Jennings continued, "Second issue that we mentioned to Mr. Barnes of what we were planning to do is… in the 21st Century, as I mentioned to you all earlier, development is occurring differently than it occurred in the 20th Century. Single developers, whether one company umbrella or multiple company umbrellas, are developing much larger tracts of land. Our challenge is, and Marc and I talked about this in December, his staff is working on it now, is how do we maintain and protect and control this finite resource, which is wastewater capacity, in light of the way development is occurring now. As Mr. Barnes said, our number for what is occurring on Tanner Plantation is around 1,350 lots. But, in any event, you have a group that is developing, in segments, lots that exceed 1,000. How are we going to address the needs of the development community and husband this resource that we have? We are working on a mechanism that we think works at staff level. I had a conversation Friday with Neil Robinson, who is a lawyer in Charleston representing a number of homebuilders and either represents Mr. Ford's organization or Counsels with them. I talked to Neil, and I told him we were working on this and what we wanted or would request of the homebuilder developer community is for them to put together a mechanism to accomplish the same thing. So, on one hand, we would come up with a mechanism, and the development community would come up with a mechanism. Then, we would get together and see how we could merge the two, because with the large developments that we are seeing, a development of 1,500 lots is 450,000 gallons taken out of our checkbook the day that construction permit is issued. It does not matter when the house is actually built and occupied, but on the day that construction permit is issued. That capacity is gone. As I said earlier, we are at 13,000,000 out of 15,000,000. We only have 1,900,000 gallons to go in our current permitted capacity for the Berkeley County Lower Berkeley Plant. I think these are issues that can be resolved, but what we do not want to do, again, as I mentioned to you earlier, is have a race to Redbank Road by developers. A developer has a 5,000-lot project, and he races to the door and says, 'here are my plans; I want a construction permit for my 5,000 lots'. That is 1,500,000 gallons right there gone. And then, Mr. Barnes happens to be driving the speed limit down Redbank Road, and he comes in the door second, but we do not have any more capacity. We do not have an answer to Mr. Barnes' second issue, but we are aware of the problem, and we are working on it. We plan to talk with the development community to address their concerns, to hear their concerns, before we come back to you with a proposal for how we think you, as the ultimate guardians of this resource, ought to allocate it in the 21st Century. We are working on that."

Council Member Charles Davis asked, "David, earlier you said we were actually using 5,000,000 gallons a day. So, when are we actually going to be using our 13,000,000? Do we actually know when that is going to occur?"

Mr. Jennings responded, "No, sir, because then you get into issues with DHEC to say dry weather flow is one thing, but wet weather flow is a horse of an entirely different color. We are in the process of designing the increase of the actual capacity, to go from 15MGD to 22.5. That is the next phase. Davis & Floyd is designing it. You all gave us money in the bond issue to construct it."

Council Member Charles Davis asked, "When do you think that will be where we are actually using the 13,000,000 if ever?"

Mr. Jennings responded, "Not in my lifetime. The problem is not the dry weather flow. We have to be sized to handle wet weather flow. Almost no treatment facility has actual dry weather flow that approaches permit capacity, because it rains in this part of the world. The older portions of our system are not watertight, some less watertight than others. We are in the process of going from 15 to 22.5. In the next couple of months, it is our plan to develop something internally for managing growth, so we can keep a handle on it, and no one can stockpile capacity. We will also get with the development community to see how it squares with their need. We are in the business of providing service. The more customers we have, the more people we can spread operating costs across, bond payment costs across. So, we are in the business of adding customers. We are not in the business of making a profit. We are in the business of paying the bills and providing bond coverage."

Council Member Charles Davis asked, "Would it be legal to put in a timeframe, such as three years, when they buy this reserve capacity? And, if it is not used, could it revert back to the Sewer Authority?"

Mr. Jennings responded, "We already have a 30-month limit. The difference between paying capacity reservation fees and getting a construction permit – that is where the 30-month time period is. Once DHEC issues the construction permit and the infrastructure is built, that comes off our checkbook whether the first house is ever built. We had some meetings last year with DHEC about some subdivisions that were permitted for flow beyond flow that will ever be put into the subdivision, because lots are wet or are partially wet, or they are in an area that is not currently as desirable as maybe it once was. DHEC's answer, every time we pointed out one of those, was, well, the problem for us is the regulating agency. Are the sewer lines in the ground, and, if we take it off your checkbook, then we have lost control. From capacity reservation, you have 30 months to get the construction permit or you lose the capacity reservation fee. It does not come off the checkbook until the construction permit and the infrastructure is actually in the ground. At that point, it is irrevocable; it is gone. If they put the sewer line in the ground, it is gone. DHEC will say, 'sure, we know it has been 15 years,' but that is less the problem than letting somebody get too far in front. If a developer comes in and wants to put in enough water and sewer lines to serve 5,000 lots, again, that goes back to why we want the impact fee paid when he gets that permit for the 5,000 lots. It comes out of the checkbook. Even though the 5,000th house may not be built for 12

years, if we were to allow that, the entire 1,500,000 gallons per day would come out of our checkbook now, even though no one realistically believes that you could build 5,000 homes, sell them and have them occupied in the next year or so. What we are working on is a process that will address developer concerns for having multiple projects, and address our concerns about maintaining some sort of control over the resource. We do not have an answer to that, but we understand the question."

Council Member Spooner asked, "Is Mr. Barnes situation that he can only get sewer service to 250 lots, or that he only gets 250 with the discount?"

Mr. Jennings responded, "Right now, he has actually got 595, and 205 are completed and built. We disagree with his number by 5. He is comfortably ahead of our 250, because folks in the office did not realize – they sort of took a separate name at face value. Early in December, the question was raised to me, 'you know, we have these different names, but it is the same fellow who shows up all the time'. I asked them to let me look at some documentation. Right now, the numbers that Marc has given me, Mr. Barnes is building and developing 595 lots. Our rule further says when 75% of your 250 are actually in use, you can get the next 250. No, I do not think he got any additional benefit from the grandfathering he had not gotten already, because he was comfortably ahead of where any other local developer tried to go. Long range, we are working at the issue of how to address multiple developments. When you get into subdivisions, I do not pretend to know a lot about this, but you have different segments with different kinds of floor plans. Maybe, in one area, you build for one market, and then, in another area, you build for a higher end market. We understand that is the way of the future. What we do not have a handle on yet is how do we address that in the 21st Century, and we are working on it. Part of what you all will want to factor in to looking at what we present to you are the more global issues of this rapid growth and development in Berkeley County. Mount Pleasant is shut down. Berkeley County has always been an attractive place to live, and, now, people are discovering it. Schools are a problem. Libraries are a problem. Roads are not a problem yet, but when I moved to Mount Pleasant in 1973, roads were not a problem in Mount Pleasant. There are lots of things that you all will have to consider, and what we want you to hear tonight is that, in so far as the Berkeley County Water & Sanitation Authority is a player in Berkeley County's growth and development in the 21st Century, we are working on how to husband and manage our resource. At the appropriate time, we will present that to you all for you to incorporate that into your view of how to manage growth in the County."

Ms. Lydia Johnson stated, "Mr. Jennings and Marc Hehn and all of you are looking to serve Berkeley County's best interests. Berkeley County is an absolutely beautiful county with so many tremendous resources. I live in Charleston and have been subjected to the throws of our comprehensive plan. I am on the Charleston County Board of Zoning Appeals. I know the process you go through when you try to enact new ordinances. It definitely poses problems. I would suggest that maybe, in the future, look at some sort of citizens committee for planning, and maybe plan that subdivisions that are such a certain size do have to set aside space for a new school or something like that.

Certainly, that is good planning. We expect fees to rise for impact fees, reservation fees, and inspection fees. But, the more lead time that you can give, and the more exacting you can be on how you determine who pays those fees, or who qualifies and does not qualify is helpful. Maybe, knowing that a development process, what has been a two-year process, now may become a four-year process. Impose your increases not in six-month increments, but maybe, perhaps, longer increments. Those are all generalizations. What I really would like to say is that we did not come here with the intent of grabbing capacity. We did not come here with the intent of taking that capacity away from any other developer, any other homebuilder or individual that would like to sell their property. We are really only requesting the capacity that we need at this point in time. If you would recognize us as four entities, it does not mean that we will ask for 1,000 lots to be included. We only want exactly what we need. We really do appreciate Mr. Jennings and Mr. Hehn and all of you working with us. Thank you very, very much."

Mr. Barnes concluded, "We are trying to spend $6,200,000 in Berkeley County over the next 12 months developing, and we are shut down. We are 95 percent built with what we have got, and our guys are chomping at the bit to go to work."

D. Mr. Steve Pendley, Pendley Homes, Re: Capacity Reservation Fees and Impact Fees.

Mr. Steve Pendley declined to address the Committee.

It was moved by Council Member Pinckney and seconded by Council Member Crosby to adjourn the Committee on Water and Sanitation Meeting. The motion was passed by unanimous voice vote of the Committee.

Meeting adjourned at 8:58 p.m.

February 9, 2004
Date Approved

COMMITTEE ON WATER AND SANITATION
(Standing Committee of Berkeley County Council)

Chairman: Mr. Steve C. Davis, District No. 8

Members: Mr. Milton Farley, District No. 1
Mrs. Judith K. Spooner, District No. 2
Mr. William E. Crosby, District No. 3
Mr. Charles E. Davis, District No. 4
Mr. Dennis L. Fish, District No. 5
Mrs. Judy C. Mims, District No. 6
Mr. Caldwell Pinckney, Jr. District No. 7
Mr. James H. Rozier, Jr., Supervisor, ex officio

A **meeting** of the **COMMITTEE ON WATER AND SANITATION,** Standing Committee of Berkeley County Council, will be held on **Monday January 12, 2004,** in the Assembly Room, Berkeley County Office Building, 223 North Live Oak Drive, Moncks Corner, South Carolina, following the meeting of the Committee on Public Works and Purchasing, the Committee on Land Use, the Committee on Human Services the Committee on Community Services and the meeting of the Committee on Justice and Public Safety at **6:00 p.m**.

A G E N D A

EXECUTIVE SESSION to discuss matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the county; or the receipt of legal advice covered by the attorney-client privilege.

APPROVAL OF MINUTES: **December 8, 2003**

A. **Consideration** of an **Ordinance** amending **Ordinance No. 00-3-17**, Which granted a Non-Exclusive Sewer Franchise to **William M Ledbetter**.

B. **J. Marc Hehn, Director, Berkeley County Water and Sanitation Authority,** Re: Capacity at Waste Water Treatment Plants.

C. **David Jennings, Esquire, Berkeley County Water and Sanitation Authority Legal Counsel,** Re:

1. 250 Lot Rule
2. Amending Resolution 03-33

D. **Mr. Steve Pendley, Pendley Homes,** Re: Capacity Reservation Fees and Impact Fees.

E. Mr. Phillip Ford, Charleston Trident Home Builders Association, Re: Impact Fees and Concerns regarding fees and contracts of BCW&SA.

January 7, 2004
S/Barbara B. Austin
Clerk of County Council